IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Revn. No. 860 of 2006

DATE OF DECISION : 05.09.2006

Baldev Singh

.... PETITIONER

Versus

State of Haryana and another

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Mr. R.S. Mamli, Advocate,
for the petitioner.

Mr. Partap Singh, Senior D.A.G., Haryana.

* * *

Petitioner Baldev Singh, father of the prosecutrix, has filed this revision petition against the order dated 4.4.2006, passed by Addl. Sessions Judge, Fast Track Court, Kurukshetra, whereby application filed by the prosecution under Section 319 Cr.P.C., for summoning respondent No.2 Surjit Singh as an additional accused has been dismissed.

2. I have heard counsel for the parties and gone through the impugned order.

3. In this case, on the statement of Narender Kaur, FIR No. 173 dated 10.9.2005 was registered at Police Station Ladwa under Sections 363, 366, 376 (G), 342, 506, 511, 120-B IPC. As per the version given in the FIR, three accused, namely Kuldeep Singh, Ravinder Singh and Jasbir Singh abducted the prosecutrix and it is alleged that she was taken to a quarter, situated in the Military area, where she was raped by the aforesaid three accused. In the FIR, it was alleged that the said quarter was belonging to respondent No.2 Surjit Singh and at the time of the alleged occurrence, he was also present there, though he was not alleged to have committed any rape.

4. After the investigation, the aforesaid three accused were found involved in the crime. However, it was found that though the rape was

committed in the quarter of Surjit Singh, but he was not present there and he was falsely implicated. Consequently, he was kept in column No.2. During the trial, after the examination of the complainant, an application under Section 319 Cr.P.C., for summoning Surjit Singh as additional accused was filed on the plea that in her statement before the court, the complainant has stated that when the rape was committed, respondent Surjit Singh was also present. The trial court, after hearing counsel for the parties and considering the material available on record, dismissed the application, while observing as under :-

> "10. A careful perusal of the record would show that the prosecutrix was found with Kuldeep Singh on 11.9.2005 at Ladwa and at that time, she made a statement that Jasbir Singh took her in car by enticing her to marry him and further that Kuldip Singh and Jasbir tried to commit rape upon her in the house of Kuldip Singh and later she was taken by train to the Quarter of Surjit Singh at Ganga Nagar where again Kuldip tried to commit rape upon her and then she was brought back to Ladwa where Jasbir Singh went for arranging the money and she was left with Kuldip Singh when she was caught. Later, on the same date, she made supplementary statement alleging continuous rape for about six months by Kuldip Singh prior to 6.9.2005 and further changing the allegations of attempt to rape into allegations of rape in house of Kuldeep and at house of Surjit Singh by Kuldip Singh and Jasbir Singh. On 16.9.2005, she made yet another supplementary statement whereby she added the name of Ravinder Singh amongst the persons who had kidnapped her and committed rape upon her in the house of Kuldip Singh and further at Ganga Nagar. Though the veracity of these three different statements made by the prosecutrix as well as the defence raised by the accused that she was writing love letters to Kuldip Singh will be seen at the time of trial but it may be mentioned, in all these three statements recorded by the police, there is not a single word that Surjit Singh was also

present at the time of commission of offence by any of all these three accused persons as stated by her during trial. There is nothing on record to indicate that the police did not record her statement correctly. It is on record that there is no evidence against Surjit Singh for having committing an offence of rape upon the prosecutrix nor for having been involved in hatching the conspiracy contrary to as argued by the learned public prosecutor. The police has not found any thing against Surjit Singh during investigation. Therefore mere naming of Surjit Singh by the prosecutrix being present at the time of rape is neither here nor there. The court cannot act as tool in hands of prosecutrix nor it can act on her whims to summon any person named by her when she is continuously changing her version. There is nothing on record to indicate that Surjit Singh knew the purpose of visit of the other alleged accused and nothing is on record as to whether his family also resided there or not. The overall assessment of evidence on record does not indicate that there are reasonable chances of conviction of Surjit Singh. The offence of providing shelter to the accused is also not prima facie made out in absence of allegations of his knowledge. It may also be mentioned that as per FIR, Kuldip Singh tried to molest the prosecutrix on earlier occasion but he left off after he tendered apology whereas as per allegations of prosecutrix there was continuous rape for six months prior to present occurrence by Kuldip Singh and this fact is also to be seen in light of love letters written by prosecutrix to Kuldip Singh. Though all these facts would be seen during trial but at the same time, taking an overall view of the matter, it is apparent that name of Surjit Singh who is living at Ganganagar with his family seems to be roped in at this stage just to settle the personal scores and put pressure on accused party. In view of the law laid down and the discussion as aforesaid and also because there is no reasonable prospects of conviction of the

accused and also in view of the frequent improvements made by the prosecutrix in the present case, there is no reason to summon Surjit Singh as additional accused. The application is accordingly dismissed."

5. As far as respondent No.2 Surjit Singh is concerned, there is no allegation against him of committing rape. The only allegation against him is that the rape was committed in his quarter and he was also present at the time of the alleged occurrence. However, during the police investigation, he was found innocent. In my opinion, the trial court has given sufficient reasons for not allowing the application filed by the prosecution to summon respondent No.2 as additional accused. There is no illegality or infirmity in the impugned order and no interference in the same is required in this revision petition.

6. Dismissed.

September 05, 2006 **(SATISH KUMAR MITTAL)**
ndj **JUDGE**